8 PERC ¶ 15211

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

California Public Employment Relations Board

Gary Ciaffoni, Edyth R. Thompson, Daisey E. Bailey, Nicki L. Hill, Clara Williams, Neville J. Maish, Merryanne L. Robinson, Glenda J. Lovejoy, Johnny C. Thibodeau, John v. Thibodeau, Kathy L. Thibodeau, Richard C. Lang, Dale F. Hemstreet, Charging Parties, v. California School Employees Association, Respondent.

Docket No. S-CO-100

Order No. 427

November 6, 1984

Before Hesse, Chairperson; Tovar and Burt, Members

Duty Of Fair Representation -- Settlement Of Unfair Practice Charge -- Disclosure Of Terms -- 23.4, 71.228, 73.113 In absence of bad faith, arbitrary or discriminatory conduct, union's acceptance of sum of money in settlement of unfair practice case did not violate its duty of fair representation to unit members, who alleged that settlement was inadequate. Further, union did not breach its duty of fair representation by failing clearly to indicate to employees who was entitled to share in settlement where evidence showed that such failure constituted mere negligence.

APPEARANCES:

Allen Law Corporation by Lawrence J. Friedman, for Gary Ciaffoni, et al.; Peter A. Janiak, Attorney for California School Employees Association.

DECISION AND ORDER

HESSE, Chairperson: The charging parties appeal the regional attorney's dismissal of their unfair practice charge filed on Jun 28, 1983, against the California School Employees Association. As the perfunctory letter of appeal advances no errors of law or fact, nor presents any newly discovered evidence, the Public Employment Relations Board has no alternative but to summarily affirm the dismissal by the regional attorney and adopt it as the Decision of the Board itself. Accordingly, Charge No. S-CO-100 is DISMISSED in its entirety without leave to amend.

Members Tovar and Burt joined in this Decision.

REGIONAL ATTORNEY'S DECISION

I indicated to you in my letter dated August 23, 1983 that the above-referenced charge did not state a prima facie case, and that unless you amended the charge to state a prima facie case or withdrew it prior to August 30, 1983, it would be dismissed. More specifically I informed you that if there were any facts which would correct the deficiencies explained in that letter, to please amend the charge accordingly.

I have not received either a request for withdrawal or an amended charge from you and am therefore dismissing this charge based on the facts and reasons stated in my August 23, 1983 letter and repeated below.

The above-referenced charge alleges that the California School Employees Association (Association) entered into a settlement with the Nevada Joint Union High School District (District) of an unfair practice charge which failed to adequately compensate the charging parties

for their lost wages, fringe benefits, and seniority. This conduct is alleged to violate sections 3544.9 and 3543.6(b) of the Educational Employment Relations Act (EERA).

My investigation revealed the following: On November 9, 1981 the California School Employees Association and its Western Nevada Chapter #435 filed an unfair practice charge against the District and five other school districts alleging unilateral termination of all bargaining unit employees and contracting out of unit work (charge No. S-CE-451). The bargaining unit consisted primarily of transportation employees.

During 1982 the legal staff of the Association pursued a settlement of this unfair with the District and participated in discussions on the settlement with the former transportation department employees of the District including the charging parties in the instant case. On July 22, 1982, a meeting took place between these previous employees of the District (including the charging parties here) and Slona Windsor and Peter Janiak of the Association's legal staff to enable CSEA to explain the proposed settlement of Case No. S-CE-451. The former employees present voted seven to five to accept the proposed settlement of $22,000 in cash to be divided into equal shares.

There is a factual dispute over Windsor's explanation of who would be eligible to collect a share of the settlement. Windsor claims that it was made clear to the people at the meeting that all former employees of the District who had applied for employment with the contractor, Russell Transportation, and been rejected would have a share of the settlement money. A former employee present at the meeting, however, said that only those present at the meeting would receive a share of the settlement proceeds.

Within a matter of weeks the controversy over who would share in the settlement caused a series of letters and phone calls to be exchanged between Clara Williams, former Chapter president of the Association's local chapter, and Windsor. In addition, the former employees conducted another meeting without a representative of CSEA where another vote was taken which rejected the settlement offer. Windsor signed the settlement agreement on behalf of the Association and its local chapter on September 30, 1982.

On February 7, 1983 the charging parties filed a complaint for damages, breach of collective bargaining agreement, and breach of duty of fair representation in Nevada County Superior Court. On June 3, 1982, Judge Francis of the Superior Court sustained the demurrers of Defendants District and Association because the "dispute as set forth in the Plaintiff's Complaint is, at the minimum, an arguable unfair labor practice with exclusive jurisdiction in the Public Employees' Relations Board (sic)." The instant charge was filed on June 28, 1983.

Based on the facts stated above, this charge does not state a prima facie violation of section 3544.9 or 3543.6(b) of EERA for the reasons explained below.

Government Code section 3544.9 states "The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit." To make out a prima facie violation of this section, the charging party must set forth a clear and concise statement of acts demonstrating that the employee association acted arbitrarily, discriminatorily or in bad faith. *King v. Fremont Unified School District Teachers Association, CTA/NEA* (4/21/80) PERB Decision No. 125; Board Rule 32615(a)(6).

The charge alleges that the Association failed to compensate the charging parties adequately, thereby violating its duty of fair representation. The investigation indicated however, that the charging parties argue that the Association violated its duty of fair representation for two reasons: (a) by failing to indicate clearly that the settlement proceeds would be distributed to *all* alleged discriminatees rather than only those who attended the meeting, and/or (b) by settling the case for too little money.

(a) There have been no facts presented nor discovered during the investigation that demonstrate that the Association's alleged failure to accurately outline how the proceeds would be divided

violated its duty of fair representation. Even assuming that the allegations of the charge concerning this incident are true, the Association's conduct does not involve more than negligence on the part of the CSEA legal staff for failure to clearly outline how the settlement would be distributed. PERB has held that mere negligence is insufficient to state a prima facie violation of section 3544.9 of the EERA. *Collins v. United Teachers of Los Angeles* (11/17/82) PERB Decision No. 258.

(b) The allegation that CSEA settled the case for too little money similarly does not state a prima facie case. The Association's acceptance of a $22,000 settlement, without more, cannot be construed as a violation of the duty, for it is not enough to establish bad faith, arbitrary or discriminatory conduct. Charging parties were ready to accept the $22,000 settlement and then changed their minds when it became clear that they might have to lessen their "cut" by including others in the settlement. The complained-of conduct demonstrated here does not rise to a breach of the duty of fair representation.

Charging parties have also alleged a violation of 3543.6(b) of the EERA. In *Kimmett v. Service Employees' International Union* (10/19/79) PERB Decision No. 106, the Board held that violation of section 3544.9 is an unfair practice under section 3543.6(b), and that conduct proscribed by section 3543.6(b) encompasses more than just the breach of duty of fair representation. To demonstrate such a violation of 3543.6(b), the conduct alleged to constitute an unfair practice must tend to or actually result in some harm to employees rights guaranteed under the EERA. *Kimmett v. Service Employees' International Union, supra.* No evidence has been presented here which shows that the charging parties rights under the EERA were abused by the Association's actions. Accordingly, no prima facie violation of section 3543.6(b) has been made out.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.